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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,620	02/03/2000	Douglas E. Ott	15006.0007U2	7719

7590 04/19/2004

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TOLEDO, OH 43604

EXAMINER
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THOMPSON, MICHAEL M

ART UNIT	PAPER NUMBER
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3763

18

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/497,620

Applicant(s)

OTT ET AL.

Examiner

Michael M. Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 32-44 and 53-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 32-43 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartels et al. (U.S. 4,621,632) in view of Bell (6,039,696). Bartels et al. teaches a method of providing for a period of time, heated and humidified gas into a patient by directing a gas from a source to a chamber, humidifying the gas within the chamber with liquid, replenishing the liquid, heating the gas, filtering the gas, sensing the temperature, controlling the electrical power, wherein the step of heating and humidifying performed on the gas is simultaneous, with the chamber adjacent to the patient. Bartels teaches all of the limitations of the claims except for explicitly reciting a humidity sensing means and a monitoring means connected to the humidity sensing means for monitoring the humidity of the gas and keeping it within a determined

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threshold. Bell teaches a humidity sensing means and a monitoring means for monitoring the humidity of the gas and keeping it within a determined threshold. It would have been obvious to one of ordinary skill in the art, at the time of invention to have modified the humidity device of Bartels et al. to monitor humidity by a humidity sensing means as taught by Bell while keeping the humidity within a determined range or threshold for the well known purpose of preventing a cavity that is normally moist from drying out thereby causing inflammation causing discomfort such as the respiratory system or otherwise.

4. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bartels et al. and Bell as applied to claims 32-43 above, and further in view of Ott et al. (5,411,474). Bartels et al. and Bell teach all of the limitations of the claims except for filtering the gas prior to the step of humidifying. Ott et al. teaches that "It is known to filter insufflation gas" to prevent passing of inorganic molecules. He further states, "The location and type of filter, however, are very important factors which will influence the effectiveness of the method." It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to have modified the insufflation device taught by the combination of Bartels et al. and Bell with the placement of a filter as taught by the insufflation device of Ott et al. for the purpose of preventing inorganic molecules from reaching the respiratory system.

5. Claims 32-44 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ott et al. ('474) in view of Bell ('696). Ott et al. teaches a method of providing for a period of time, heated and humidified gas into a patient by directing a gas from a source to a chamber, humidifying the gas within the chamber with liquid, replenishing the liquid, heating the gas, filtering the gas, sensing the temperature, controlling the electrical power, wherein the step of

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heating and humidifying performed on the gas is simultaneous, with the chamber adjacent to the patient and that "It is known to filter insufflation gas" to prevent passing of inorganic molecules. He further states, "The location and type of filter, however, are very important factors which will influence the effectiveness of the method." Ott et al. teaches all of the limitations of the claims except for explicitly reciting a humidity sensing means and a monitoring means connected to the humidity sensing means for monitoring the humidity of the gas and keeping it within a determined threshold. Bell teaches a humidity sensing means and a monitoring means for monitoring the humidity of the gas and keeping it within a determined threshold. It would have been obvious to one of ordinary skill in the art, at the time of invention to have modified the humidity device of Bartels et al. to monitor humidity by a humidity sensing means as taught by Bell while keeping the humidity within a determined range or threshold for the well known purpose of preventing a cavity that is normally moist from drying out thereby causing inflammation causing discomfort such as the respiratory system or otherwise.

#### *Response to Arguments*

6. Applicant's arguments with respect to claims 32-44 and 53-55 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

#### *Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### Contacts

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Michael Thompson whose telephone number is (703) 305-1619. The Examiner can normally be reached on Monday through Friday from 9 am to 5 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, Brian Casler, can be reached on (703) 308-3552. The official fax phone number for all submissions to the organization where this application or proceeding is assigned is (703) 872-9306.

Michael M. Thompson

Patent Examiner

**BRIAN L. CASLER**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**

MT



April 15, 2004